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UNITED STATES DISTRICT COURT  
 FOR THE  
 DISTRICT OF MASSACHUSETTS

EDWARD A. McCARTHY,

*Plaintiff,*

v.

McLANE COMPANY, INC. and  
 CONSTRUCTION MANAGEMENT  
 TECHNOLOGY,

*Defendants.*

CIVIL ACTION  
 NO.

**04-10335RWZ**

MAGISTRATE JUDGE Allen

**NOTICE OF REMOVAL**

**TO:** (1) The Honorable Judges of the United States District Court for the District of Massachusetts and (2) George A. Malliaros, Esq., 1794 Bridge Street, Suite 22B, Dracut, MA 01826.

1. The Petitioner, McLane Company, Inc. ("McLane"), respectfully shows, upon information and belief, that it is one of the named defendants in the above-entitled civil action brought by the Plaintiff, Edward A. McCarthy ("McCarthy"), in the Middlesex Superior Court Department, Middlesex County, Massachusetts, Civil Action No. MICV 2004-00329-L2 (the "Civil Action").

2. On or about January 27, 2004, the Civil Action was commenced in the aforesaid Middlesex Superior Court Department, and Petitioner was served with the Summons, Complaint, Statement of Damages and Tracking Order in this action, copies of which are attached hereto as **Exhibit "A,"** on February 6, 2004.

3. Petitioner was also served, on the same date, with the Plaintiff's First Set of Interrogatories to the Defendant, McLane Company, Inc., **Exhibit B** hereto, and the Plaintiff's First Request for Production of Documents to the Defendant, McLane Company, Inc., **Exhibit C** hereto.

4. Upon information and belief, no further proceedings have been had in the Civil Action, no other party has answered or appeared, and the time of Petitioner within which to file a notice of removal has not expired.

5. Jurisdiction. Based on the allegations contained in the Complaint, the above-entitled action is a civil suit which may be removed to this Court by the Petitioner pursuant to 28 U.S.C. §§ 1332(a) and 1441(a) on the basis of diversity of citizenship of the parties. More specifically, the plaintiff, McCarthy, is a resident of Massachusetts, Complaint, par. 1, while the Petitioner, defendant McLane, is a citizen of Texas. Complaint, par. 2. Defendant Construction Management Technology ("CMT"), who has not yet appeared in this action, is also a citizen of Texas. Complaint, par. 3. Thus, there is a complete diversity of citizenship (Massachusetts – Texas) of the parties for purposes of 28 U.S.C. § 1332(a). The amount of medical and special damages alleged by the plaintiff, not including his demand for pain and suffering, is at least \$146,214. See Statement of Damages. Diversity jurisdiction therefore exists pursuant to 28 U.S.C. § 1332(a), and this action is removable pursuant to 28 U.S.C. § 1441(a).

6. Venue. Petitioner desires to remove this action to the district court of the United States for the district in which the action is now pending, to wit, to the District of Massachusetts (Eastern Section). 28 U.S.C. §1446(a).

7. After the filing of this Notice of Removal of this action to the United States District Court for the District of Massachusetts, (a) written notice of the filing of this Notice will be given to the attorney for the Plaintiff as provided by law, (b) a certified copy of this notice will be filed with

the Clerk of the Middlesex Superior Court, Middlesex County, Massachusetts, and (c) certified copies of all pleadings on file in said Middlesex Superior Court Department, Civil Action No. MICV 2004-00329-L2 will be filed with this Court.

8. Petitioner has a good and sufficient defense to the Plaintiffs' claims in this action.

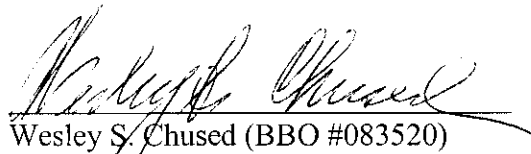
9. No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, Petitioner McLane Company, Inc. prays that this action be removed from the Middlesex Superior Court Department, Middlesex County, Massachusetts to the United States District Court for the District of Massachusetts.

McLANE COMPANY, INC.

By its attorney,

February 18, 2004

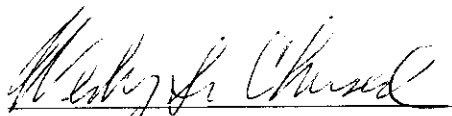
  
Wesley S. Chused (BBO #083520)  
LOONEY & GROSSMAN LLP  
101 Arch Street  
Boston, MA 02110  
(617) 951-2800

**CERTIFICATE OF SERVICE**

I hereby certify that I on February 18, 2004 served a copy of the foregoing pleading upon all parties hereto by mailing copies thereof, via first class mail, postage prepaid, properly addressed to:

George A. Malliaros, Esq.  
1794 Bridge Street, Suite 22B  
Dracut, MA 01826

Construction Management Technology  
15280 Addison Road, #300  
Addison, TX 75001

  
Wesley S. Chused